

ERNEST R. DYCK,
Appellant

: Order Affirming Decision

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: Docket No. IBIA 00-22-A

ACTING EASTERN OKLAHOMA
REGIONAL DIRECTOR, BUREAU
OF INDIAN AFFAIRS,
Appellee

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: November 20, 2000

This is an appeal from an October 6, 1999, decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that Oil and Gas Lease 503-8216 (70151) Lizzie Pinkey, Creek M-338, had expired for failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board affirms the Regional Director's decision.

The lease at issue here was approved by BIA on August 30, 1988, for a term of three years "and as much longer thereafter as oil and/or gas is produced in paying quantities." On October 6, 1999, the Regional Director sent Appellant a notice of expiration, stating that the last reported production from the lease had occurred in May 1998.

In his appeal to the Board, Appellant first contends that his appeal should be granted because of the Regional Director's delay in submitting the administrative record.

As explained in the Board's January 27, 2000, order, the delay was the fault of the Board, not the Regional Director. It is not a basis on which the Regional Director's decision may be vacated or reversed.

On the merits, Appellant argues: (1) BIA was required to follow the lease cancellation procedures in section 6 of the lease; (2) production on the lease resumed sometime in 1999; (3) the Department of the Interior sent Appellant a bill for annual rent on the lease in September 1999, and he paid the rent, thereby validating the lease for another year; and (4) the Department should relinquish supervision over the lease because the lessor, Lizzie Pinkey Hanson, has died and her heirs are non-Indian.

The Regional Director's October 6, 1999, decision was not a cancellation of Appellant's lease. When an oil and gas lease has a term like that in Appellant's lease)) i.e., a primary term and "as much longer thereafter as oil and/or gas is produced in paying quantities")) the lease, if in its extended term, expires when production ceases. Expiration occurs by operation of law and not because of any action taken by BIA. E.g., Oxley Petroleum v. Acting Muskogee Area Director, 29 IBIA 169, 170 (1996). The Board has consistently held that BIA is not required to follow lease cancellation procedures when giving notice that a lease has expired by operation of law. E.g., Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, 21 IBIA 88, 94-95, 98 I.D. 419, 423 (1991), aff'd Benson-Montin-Greer Drilling Corp. v. Lujan, No. CIV-92-210 SC-LFG (D.N.M. Jan. 13, 1993), and cases cited therein. Therefore, BIA was not required in this case to follow the lease cancellation procedures in Appellant's lease.

Appellant does not dispute that production ceased in May 1998 but states that "[e]xtensive work was done on the lease in the spring and summer of 1999" and that, thereafter, "production was obtained." Appellant's Opening Brief at 3. He fails to explain why he apparently waited a year after production ceased before beginning work on the lease.

Appellant does not contend that his long period of non-production was caused by a mechanical breakdown or accident (which might excuse the non-production had Appellant also shown that he had made repairs and resumed production within a reasonable time). See, e.g., P & M Drilling, Inc. v. Acting Muskogee Area Director, 33 IBIA 208 (1999), and cases cited therein. The burden was on Appellant to show that his period of non-production was excusable. E.g., Oxley Petroleum, supra, 29 IBIA at 171. He has failed to carry that burden here.

Appellant next contends that his lease was validated when he paid annual rent after receiving a bill in September 1999. 1/ By that time, however, his lease had expired by operation of law and thus could not have been validated by his payment. Although it is arguable that Appellant should not have been billed for rent in September 1999, 2/ there is no doubt that he is

1/ Appellant attaches a copy of a Sept. 15, 1999, bill he received from the Minerals Management Service (MMS). Although the bill does not specifically state that it is for rent, the amount of the bill corresponds to the rent stated in Appellant's lease. Accordingly, the Board presumes that the MMS bill was for rent. The Board also presumes that Appellant paid the bill, as he states he did, although he produces no proof of payment.

2/ It is not clear from the record in this case how the three Interior bureaus involved in Indian oil and gas leasing (i.e., BIA, MMS, and the Bureau of Land Management) communicate with each other concerning cases like this. It seems possible that MMS was not aware, when it sent Appellant a bill in September 1999, that BIA was shortly to determine that the lease had expired.

liable for payment of some sort, whether it is considered rent or trespass damages, for the period of time he remained on the lease after it expired. In any event, Appellant's lease was not validated by his payment of the September 15, 1999, bill.

Finally, Appellant contends that the Department should relinquish supervision of the lease because the Indian lessor has died and her heirs are non-Indian. ^{3/} The Regional Director also states that the lessor is deceased but makes no statement concerning the identity of her heirs. In fact, at the time he transmitted the administrative record, he stated that BIA had not yet been advised of the appointment of an administrator or executor for the estate. Neither Appellant nor the Regional Director states the date of the lessor's death, so it is not clear whether she died before or after production ceased in May 1998. As Appellant recognizes, however, no relinquishment had taken place in May 1998. Because the lease expired when production ceased, relinquishment of supervision is now a moot point.

Appellant has failed to show error in the Regional Director's determination that Appellant's lease has expired.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's October 6, 1999, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{3/} Section 8 of the lease provides:

"Relinquishment of Supervision by the Secretary of the Interior.)) Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days' written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as provided in section 3(c) [concerning rents and royalties]."